

REMARKS

Claims 1-20 have been provisionally rejected for obviousness type double patenting based upon Applicant's co-pending application Serial No. 10/617,942. Applicant is abandoning the '942 application, such that the double patenting rejection will be moot.

Claim 15 has been objected to due to an inadvertent error in terminology. Applicant has changed "cross bar" to --handle--, as suggested by the Examiner, such that this objection is moot.

Claims 1-7, 11, and 13-19 have been rejected under 35 U.S.C. § 102 as being anticipated by Dillard. Claims 1-6 and 11-19 have been rejected under 35 U.S.C. § 102 as being anticipated by Fall. Claims 1-6, 11, and 14-19 have been rejected under 35 U.S.C. § 102 as being anticipated by Pobran. Claims 1-6, 7, 11 and 15 have been rejected under 35 U.S.C. § 102 as being anticipated by Mojden. Claims 1-9 and 16-20 have been rejected under 35 U.S.C. § 103 as being obvious over Weeks. Applicant respectfully traverses these rejections, and requests reconsideration of the claims, as amended.

INDEPENDENT CLAIM 1 DISTINGUISHES OVER THE CITED REFERENCES

Claim 1 is directed towards a chin up bar assembly. This preamble language cannot be ignored, since every word in the claim must be given meaning. *Exxon Chemical Patents, Inc. v. Lubrizol Corp.*, 64 F.3d 1553, 1557 (Fed. Cir. 1995). The Patent Office Board of Appeals has also explained that, "the presumption is that every word is meaningful." *In re Sabatino*, 480 F.2d 911, 912 (CCPA 1973).

The Mojden patent clearly is not chin up bars, in accordance with claim 1. Rather, Mojden is a dip bar, as described at column 1, lines 5-8. As a matter of law, Mojden cannot anticipate claim 1, since it is virtually impossible for a product that is not the same type of

product as the claimed invention to legally anticipate the invention. As the Federal Circuit has explained, "there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention." *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991) (emphasis added). "Any degree of physical difference between the patented product and the prior art, no matter how slight, defeats the claim of anticipation." *American Permahedge, Inc. v. Barcana, Inc.*, 857 F.Supp. 307, 317 (SDNY 1994), affirmed, 105 F.3d 1141 (Fed. Cir. 1997). Quite simply, the identical invention must be shown in its complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). A § 102 rejection is only proper "when the claimed subject matter is identically disclosed or described in the prior art." *Application of Marshall*, 579 F.2d 301, 304 (CCPA 1978).

Here, since Mojden is not chin up bar assemblies, it cannot anticipate claim 1. Therefore, the § 102 rejection based on Mojden must be withdrawn.

Independent claim 1 has been amended by incorporating the limitations from claim 7 (now cancelled) regarding "a pair of collars slidably mounted on the cross bar". Claim 1 has further been amended to provide that the handles are mounted on the collars, and are held in a selected position along the cross bar "solely by a user's weight". None of the cited references meet these limitations of claim 1.

More particularly, the Fall and Pobran patents do not disclose collars on the cross bar, in accordance with amended claim 1. Dillard does not hold the handles in a selected position "solely by the user's weight," as required by claim 1. Rather, Dillard has notches 16 in the top of the cross bar which receive the pins 38 so as to prevent movement of the handles along the cross bar. Similarly, Mojden has pins 56 received in holes in the top of the cross bar, to prevent the

handles from sliding along the cross bar, and thus does not hold the handles in the selected position "solely by a user's weight". The Weeks patent also has holes 43 in the bottom of the cross bar which receive projections 40, 41 on the handle arm to hold the handle in position on the bar. The Weeks patent also does not have a pair of collars, nor a pair of handles, as required by claim 1, and accordingly does not meet the limitations of claim 1.

Furthermore, Weeks does not meet the cross bar limitation of claim 1. As part of a chin up bar assembly, the cross bar necessarily and inherently extends in an orientation across the user's body, substantially parallel to a line extending between the user's shoulders. Such orientation is easily understood by a person having ordinary skill in the exercise art. In comparison, the bar 31 of Weeks extends in a line or plane perpendicular to the user's shoulders, and thus is not a cross bar. The word "cross" cannot be read out of claim 1. While the Weeks bar 31 crosses from one end of the bed to the other end of the bed, it is not a cross bar in a sense of a chin up bar assembly, as interpreted in view of the Specification, and as understood by a person having ordinary skill in the exercise art. Therefore, Weeks cannot meet this limitation of claim 1.

Thus, claim 1 distinguishes over the cited references so as to be in proper form for allowance. Claims 2-6, 8-10 and 21-23 depend from claim 1 and should be allowable as depending from an allowable base claim.

DEPENDENT CLAIMS 4, 5 AND 8 DISTINGUISH OVER THE REFERENCE

Claim 4 further distinguishes over the cited references by requiring that the handles are moveable "relative to the collars" between locked and unlocked positions. Again, the Fall and Pobran patents do not have collars to which the handles are mounted. In Dillard, the handle is

moveable relative to the collar via the vertical pivot axis 70, but such movement is not between locked and unlocked positions, in accordance with claim 4. In Mojden, the handles 14 are fixed to the collars 54, and have no movement relative to the collars, in accordance with claim 4. Thus, the rejection of claim 4 based upon these references should be withdrawn.

Claim 5 has been amended to provide that the handles are pivotal "relative to the collars" about horizontal and vertical shafts. The horizontal shaft is the bolt 34 and the vertical shaft is the shaft 42, as best seen in Figures 3 and 4 of the drawings. None of the references meet these limitations. In Dillard, the handle is pivotal relative to the collar only about a vertical shaft 70. In Weeks, there is no horizontal shaft about which the handle pivots. In Mojden, the handles are fixed relative to the collars. In Fall, the handles 74 are pivotal about a horizontal shaft only, relative to the collar. Pobran has no collar to which the handles are mounted. Therefore, claim 5 further distinguishes over the references so as to be allowable.

Claim 8 has been amended to provide that the arm of the handle rotates about "an axis parallel to the cross bar." In the drawings, this axis is defined by the bolt 34. Weeks is the only reference cited against claim 8. However, in Weeks, the rotation of the arm 34 is about an axis which is perpendicular to the cross bar 31, rather than parallel to the cross bar, as required by claim 8. Therefore, claim 8 further distinguishes over the cited reference so as to be allowable.

INDEPENDENT CLAIM 11 DISTINGUISHES OVER THE CITED REFERENCES

Independent method claim 11 has been amended to provide for the step of "pivoting each handle to a locked position such that a user's weight alone precludes sliding of the handles along the cross bar." None of the cited references meet this limitation. As discussed above with respect to claim 1, Dillard includes slots 16 in which the pin 38 of the handles is received to

preclude sliding; Mojden includes a pin 56 received in holes in the cross bar to preclude sliding; and Weeks includes projections 40, 41 extending into holes in the cross bar to prevent sliding. Similarly, in Fall, a locking lever 100, 102 is provided to lock the handles in position relative to the cross bar 12. In Pobran, while the handles 42 pivot relative to the cross bar 12, such pivotal movement of the handle does not place the handle in a locked position.

Therefore, claim 11 distinguishes over the cited references so as to be allowable. Claims 12-14, 24 and 25 depend from claim 11 and should be allowable as depending from an allowable base claim.

INDEPENDENT CLAIM 16 DISTINGUISHES OVER THE CITED REFERENCES

Independent claim 16 is also directed to a chin up bar assembly. As discussed above with respect to claim 1, the Mojden patent cannot legally anticipate claim 16, since this reference is not directed to a chin up bar assembly.

Furthermore, claim 16 requires a pair of collars slidably mounted on the cross bar. As discussed above with respect to claim 1, the Fall and Pobran patents do not have such collars, such that these references do not anticipate claim 16.

Claim 16 has been further amended to provide that the handles on each collar pivot relative to the collar about a substantially vertical shaft and a substantially horizontal shaft. The Dillard, Fall, Pobran, and Mojden patents do not have such dual pivotal motion about vertical and horizontal shafts by the handle relative to the cross bar. The Weeks patent does not have a horizontal shaft about which the handle pivots relative to the collar. The Weeks patent also does not have a pair of collars, as required by claim 16, such that Weeks does not meet the limitations of claim 16.

Claim 16 is similar to claim 1 in requiring a cross bar. As discussed above with respect to claim 1, the Weeks bar 31 is not a cross bar, but rather is a longitudinal bar, such that claim 16 distinguishes over Weeks.

Therefore, claim 16 distinguishes over the cited references so as to be allowable. Claims 18-20, 26 and 27 depend from claim 16 and should be allowable as depending from an allowable base claim.

DEPENDENT CLAIMS 18 AND 19 DISTINGUISH OVER THE REFERENCES

Claim 18 requires that the handles are pivotal for movement "between locked and unlocked positions." The Dillard, Fall, Pobran, and Mojden patents do not have handles which pivot between locked and unlocked positions, in accordance with claim 18. Thus, claim 18 distinguishes over these references.

Claim 19 provides that the handles are held in the locked position "solely by the user's weight." As discussed above with respect to claim 1, none of the cited references lock the handle solely by the user's weight. Therefore, claim 19 further distinguishes over the references so as to be allowable.

NEW CLAIMS 21-27 DISTINGUISH OVER THE REFERENCES

New claims 21 and 26 provide that the handles include hand grips which are spaced forwardly from the cross bar. Claim 25 includes the method step of "positioning the hand grips forwardly from the cross bar." In Dillard, Pobran, and Weeks, the hand grip is positioned directly beneath the cross bar, such that these references do not meet the limitations of claims 21, 25 and 26.

Claim 22 provides that the "handles each include an arm pivotally mounted to the cross bar about a horizontal shaft to define a fulcrum". Dillard, Fall, Pobran and Mojden have no structure corresponding to such an arm or fulcrum. Weeks does not have a horizontal shaft. Therefore, claim 22 further distinguishes over these references so as to be allowable.

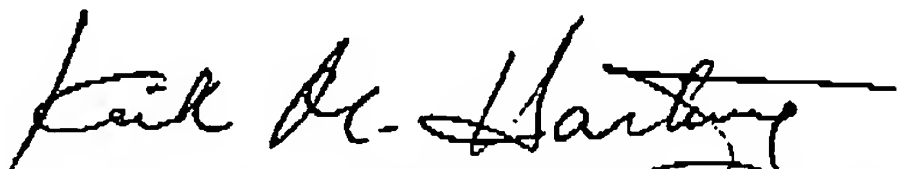
Claims 23 and 27 provides that the handles engage a bottom surface of the cross bar to lock the handles in position and preclude sliding movement of the handles along the cross bar. Method claim 24 similarly provides for the step of "engaging a bottom surface of the cross bar with the handles to retain the handles in a locked position." The Dillard, Fall, Pobran, and Mojden patents have no structure or step meeting these limitations of claims 23, 24 and 27.

CONCLUSION

Please charge Deposit Account No. 26-0084 in the amount of \$75.00 to cover the fee for the addition of three claims over 20. No additional fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



KIRK M. HARTUNG, Reg. No. 31,021
McKEE, VOORHEES & SEASE, P.L.C.
801 Grand Avenue, Suite 3200
Des Moines, Iowa 50309-2721
Phone No: (515) 288-3667
Fax No: (515) 288-1338
CUSTOMER NO: 22885

- pw -

Attorneys of Record